

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1435

IN THE MATTER OF:

REMANDS from United States Court	)	Served June 5, 1975
of Appeals for the District of)	
Columbia Circuit of D. C. Transit)	
System, Inc., Proceedings:)	
)	
Application of D. C. Transit	)	Application No. 453
System, Inc., for Authority to)	
Increase Fares	)	Docket No. 156
)	
Application of D. C. Transit)	
System, Inc., for Authority to	)	Application No. 436
Increase Its Fleet in Lieu of)	
Purchasing Buses	)	Docket No. 156
)	
Application of D. C. Transit	)	Application No. 226
System, Inc., for Authority to)	
Increase Fares	)	Docket No. 32
)	
Application of D. C. Transit	)	Application No. 344
System, Inc., for Authority to)	
Increase Fares	)	Docket No. 101
)	
Application of D. C. Transit	)	Application No. 573
System, Inc., for Authority to)	
Increase Fares	)	Docket No. 201
)	
Application of D. C. Transit)	
System, Inc., for Suspension of	)	Application No. 553
the Program for the Purchase of)	
New Buses	)	Docket No. 201
)	
Application of D. C. Transit	)	Application No. 613
System, Inc., for Authority to)	
Increase Fares	)	Docket No. 216

By Order No. 1420, served April 22, 1975, D. C. Transit System, Inc. (Transit) was assessed \$50,000 and directed to deposit the amount in two installments. The assessment and directive set forth in that order were made pursuant to the provisions of the Compact, Title II, Article XII, Section 19. That section provides that all reasonable expenses of a proceeding of any nature, conducted by the Commission, of or concerning any carrier, and all expenses of any litigation, including appeal, shall be borne by such carrier. That section also provides the procedure for the payment by the carrier to the Commission of such expenses.

On May 21, 1975, Transit filed two motions to amend Order No. 1420 and an application for reconsideration of Order No. 1420. The motions and application were filed in a single pleading and shall be separately considered hereinafter. Leonald N. Bebchick, et al., (Bebchick) protestants in Docket Nos. 32 and 101, on May 28, 1975, filed a response.

MOTIONS TO AMEND

By Order No. 1360, served October 10, 1974, Transit was assessed \$150,000 and directed to deposit the amount in six equal installments. Order No. 1367, served November 4, 1974, denied Transit's application for reconsideration of that order. The six equal installments were duly deposited. Transit states that nothing was said in Order No. 1420 with respect to the expenditure of \$150,000, the reason or reasons why that amount was not sufficient, or the specific purpose or purposes for which the \$50,000 assessment is required. Transit requests that it be given a statement (a) setting forth how the \$150,000 has been expended, (b) why the \$150,000 was not sufficient, and (c) the purpose for which the \$50,000 is required.

The Commission shall supply Transit with a statement setting forth the expenditures to date. Transit will be informed of any future expenditures when made. As Order No. 1420 indicates, much of the required work has been completed or is in process. The Commission's evaluation of the amount on deposit in the Escrow Expense Account indicated that it was not sufficient to cover the expenses of the remand proceedings which have not been completed.

Transit admits that it was engaged in the business of providing mass transportation service in the Metropolitan District and that the Compact authorized the Commission to assess expenses against it prior to January 13, 1973. However, since January 13, 1973, Transit states that it has not had and does not now have any gross operating revenues derived from transportation subject to the Compact as set forth in Section 19(b) thereof. Transit requests that the \$50,000 assessment be charged against and paid out of the Riders' Fund 1/.

Bebchick responds that this Commission has no authority to charge expenses incurred by it in conducting the remand proceedings against the Riders' Fund. Bebchick makes two separate contentions in support of this premise. First, the determination of how the Riders' Fund is to be disbursed and the propriety of all charges against it resides in the exclusive retained jurisdiction of the United States Court of Appeals for the District of Columbia Circuit (Court). Second, the farepaying public should not be required to bear the Commission's expenses with respect to the determination of the amount of excess earnings because such determination did not involve the use of Commission experts or the incurring of similar costs and, as respects bus maintenance expense, the determination of that amount benefited only Transit.

The Compact clearly provides in Title II, Article XII, Section 19(a) that all reasonable expenses of any proceeding of any nature shall be borne by the carrier in the first instance. Transit has requested the Commission to seek the funds necessary to satisfy the assessment from the Riders' Fund. However, the Riders' Fund does not represent funds of the carrier available to satisfy the assessment. Accordingly, Transit's motions shall be denied.

1/ The Riders' Fund was a reserve on Transit's books for the benefit of its customers established pursuant to the decision in Bebchick v. Public Utilities Commission, 318 F.2d 187 (en banc) cert. denied 373 U. S. 913 (1963). The Riders' Fund has been the subject-matter of extensive litigation and currently is a facet of the remand in Bebchick v. Washington Metropolitan Area Transit Commission, 485 F.2d 858 (1973).

APPLICATION FOR RECONSIDERATION

Transit's application for reconsideration sets forth several claimed errors as grounds for such reconsideration. See Compact, Title II, Article XII, Section 16. Several of these errors were set forth in Transit's application for reconsideration of Order No. 1360. The Commission considered these claimed errors in deciding to deny Transit's application for reconsideration. The Commission has considered each of the alleged errors set forth hereinafter. None of the alleged errors warrants reconsideration of Order No. 1420.

Transit contends that it is not a carrier or a person engaged in transportation subject to the Compact. Transit further contends that the remand proceedings are not an investigation or other proceeding within the provisions of Section 19(a) of the Compact.

Bebchick responds that the requirement that a person bear the expenses of Commission proceedings arises at the time the particular proceeding is initiated and that it is beyond dispute that Transit was a carrier at the time it initiated Docket Nos. 32 and 101 in 1962 and 1964, respectively. Bebhick contends that the provisions of Section 19(a) of the Compact make it quite clear that such carrier liability continues until the proceeding, including litigation and appeals, is concluded.

The remand proceedings currently pending before the Commission had their origins in the opinions of the Court in D. C. Cir. No. 21, 865, Democratic Central Committee v. WMATC, cert. denied February 19, 1974, D. C. Cir. No. 23,720 Bebchick v. WMATC, D. C. Cir. No. 23, 747, D. C. Transit v. WMATC, D. C. Cir. No. 23, 958, D. C. Transit v. WMATC, D. C. Cir. No. 24, 398, Democratic Central Committee v. WMATC, D. C. Cir. No. 24, 415, District of Columbia v. WMATC, and D. C. Cir. No. 24, 428, Black United Front v. WMATC, each decided June 28, 1973. In these opinions, the Court set aside certain aspects of Commission Orders Nos. 773, served January 26, 1968; 981, served October 17, 1969; 984, served October 24, 1969; and 1052, served June 26, 1970, relating to fare increases for Transit. Assuming, arguendo, that Transit is not now a carrier or person engaged in transportation subject to the Compact, at the time of the applications resulting in the Orders now before the Commission on remand Transit clearly was a carrier and a

person performing transportation for hire between points in the Metropolitan District. The remand proceedings are a continuation of the fare application proceedings as a result of the Court decisions.

Transit contends that the \$50,000 assessment is not a reasonable sum. The determination of a reasonable sum to pay the reasonable expenses is within the Commission's discretion. Based upon an evaluation of the expenses to date of the remanded proceedings and an estimate of the expenses to be incurred, the Commission believes the additional amount of \$50,000 is reasonable and sufficient.

Transit contends that the amount assessed herein exceeds the formulae set forth in the Compact, Title II, Article XII, Section 19(b). Bebchick responds that Section 19(b)(2) of the Compact was enacted for the purpose of assuring that a carrier sustaining liability for the expenses of Commission proceedings would continue to bear that obligation even if it abandons or otherwise terminates its transportation operations subject to the Compact. Transit's contention is not supported by any data in the application for reconsideration.

Transit contends that the assessment amounts to the confiscation of its property without adequate consideration and in violation of the due process of law provisions of the Constitution of the United States. Bebchick responds that the entitlement in Section 19(a) of the Compact that a carrier may charge Commission expenses through rates is permissive and whose exercise, in addition, is subject to Commission discretion. Bebchick submits that the obligation to pay expenses is a statutory mandate. As previously indicated, the Compact provides that the carrier shall pay the reasonable expenses concerning the carrier. Order No. 1420 conforms to the provisions of the Compact.

Transit states that the Commission erred in finding that the expenses of the proceedings herein are expenses subject to Section 19(a), that Transit and not the Riders' Fund should be assessed the amount estimated to be needed to cover the expenses, and that \$50,000 represented the amount of additional expenses expected to be incurred in the proceedings herein. The Commission does not believe that it has erred with respect

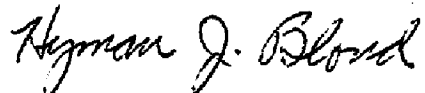
to any of these findings. Each of these errors was asserted in a similar manner in Transit's application for reconsideration of Order No. 1360. Transit has not presented any basis warranting reconsideration of the assessment and directive set forth in Order No. 1420.

THEREFORE, IT IS ORDERED:

1. That the motions by D. C. Transit System, Inc., be, and they are hereby, denied.

2. That the application of D. C. Transit System, Inc., for reconsideration of Order No. 1420, served April 22, 1975, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Hyman J. Blond".

HYMAN J. BLOND
Executive Director